

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	CASE NO.	1:95 CR 397
)		
Plaintiff,)	JUDGE DONALD C. NUGENT	
)		
v.)		
)		
BYRON LEWIS,)	<u>MEMORANDUM OPINION</u>	
)	<u>AND ORDER</u>	
Defendant.)		

This matter comes before the Court upon Defendant, Byron Lewis' Motion for Reduction of Sentence Pursuant to Title 18 U.S.C. § 3582(c)(2) and § 3553 (a). (ECF #215). The government filed an opposition to Mr. Lewis' motion. (ECF #216). Mr. Lewis' motion seeks a two level downward departure based on retroactive changes to the crack cocaine guidelines under the March 2008 amendments to the sentencing guidelines. He also argues that his original sentencing was not proper. Mr. Lewis has challenged his original sentencing in multiple appeals and through every conceivable approach over the last eleven years. In each instance both this Court and the Sixth Circuit Court of Appeals have upheld his sentence as legal and appropriate under the circumstances. (See ECF # 166, 171, 178, 182, 187, 200, 206, 207). Further, Mr. Lewis previously filed a motion seeking exactly the same relief under the changes to the crack cocaine sentencing guidelines in February of 2008. (ECF #208). This Court denied that petition because Mr. Lewis was sentenced to the mandatory minimum sentence and the amendments could not be applied to reduce a mandatory minimum sentence. The Court of Appeals upheld that decision. (ECF #214). For these reasons, Mr. Lewis's motion (ECF #215) is DENIED. To

the extent Mr. Lewis may have any arguments for a reduction in sentence based on the Fair Sentencing Act Amendment, the Court has already appointed the Federal Public Defender's Office to review the case and assist Mr. Lewis in the preparation of any motion that may be appropriate after the November 1, 2011 retroactivity date. (ECF #218). Any motions filed by Mr. Lewis based on that Act, filed prior to the retroactivity trigger date will be dismissed as untimely. IT IS SO ORDERED.

/s/ Donald C. Nugent
DONALD C. NUGENT
United States District Judge

DATED: October 11, 2011